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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,019	11/30/2001	Andrew Joseph Keogh	063511-9043-00	4717
23409 7590 05/10/2007 MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE Suite 3300 MILWAUKEE, WI 53202			EXAMINER TRAN LIEN, THUY	
			ART UNIT 1761	PAPER NUMBER
			MAIL DATE 05/10/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/889,019

Applicant(s)

KEOGH, ANDREW JOSEPH

Examiner

Lien T. Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 24-35, 37, 38, 40-47, 53-57 and 61-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-34, 37, 38, 40-47, 53-57 and 61-63 is/are rejected.
- 7) ☒ Claim(s) 35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Claims 24,25-29,31-34,37,38,40-43,45-47, 53-57, 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisson et al.

Bisson et al disclose a process of making puffed product. The process comprises the steps of forming mixture of materials and passing the mixture through an extruder having temperature in the range of 30-70 degree C in the barrel, 40-100 degreeC in the nozzle and under pressure. The paste-like material issuing from the extruder is passed into an enclosure where a subatmospheric pressure prevails. The enclosure has a pressure of from 2-71kPa( .02-.7atms). The paste-like material expands in the enclosure by evaporation of the water. The strand issuing from the extruder nozzle may be cut up into rods, pellets or chip. Alternative, the extruded strand may be discharged into a space where atmospheric pressure prevails. The temperature in the extruder imparts to the materials the plasticity required for passing smoothly through the bores in the nozzle. The product obtained can be seasoned, sweetened, flavoured or coloured. The puffed product may be impregnated with a fat, syrup, liquor or an alcohol. The mixture used to form the food product contains water. (see col. 2-3)

Bisson et al do not disclose using a belt conveyor, the foodstuff is a confectionery, forming the composition into balls, the second temperature being lower than the first temperature.

The limitation of the first temperature and pressure being in a region outside of the extruder does not define over Bisson et al. The materials in Bisson et al are passed through an extruder and a paste-like material is formed emerging from the extruder. After the paste material exists the extruder, it is obvious that the paste has a

certain temperature because the material is heated inside the extruder; this is equivalent to the first temperature. As the paste exists the extruder, it comes out; thus, the pressure is changed to atmospheric pressure. This is equivalent to the first pressure. With respect to claims 24, 38, the materials in the Bisson process is heated in an extruder to a temperature in the range of 30-100 degree C. As the material exists the extruder, the composition would still have the temperature it is heated to inside the extruder because no cooling take places. The paste is then passed into an enclosure where a subatmospheric pressure prevails. This is equivalent to the claimed setting region. It would have been obvious to make the temperature here lower because Bisson et al disclose the temperature falls to cause puffing and rigidification of the cellular structure. It would have been obvious to one skilled in the art to determine the appropriate temperature and pressure depending on the substance being puffed and the degree of puffing through routine experimentation. It would have been obvious to use a belt conveyor to transport the composition to the enclosure where expansion takes place. The use of the conveyor belt enhances the speed of the process. It would also have been obvious to make a confectionery product because Bisson et al disclose various compositions can be made and materials such as syrup, sweetening agent can be added. The addition of sugar will make the product to be a confectionery product.

Claims 30,44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisson et al in view of Forkner.

The teaching of Bisson is described above.

Bisson does not disclose adding a chemical expanding agent.

Forkner discloses expanded confections. He teaches to add chemical expanding agent to aid in the expansion. (See col. 6 lines 45-50)

It would have been obvious to add a chemical expanding agent as taught by Forkner in the composition of Bisson to aid in the expansion of the food product.

Claim 35 is free of prior art because there is no teaching that the paste is being heated to the first temperature in a region outside of the extruder.

In the response filed 2/12/07 and 4/2/07, applicant submits 132 declarations to show that the Bisson reference does not teach the claimed first temperature and first pressure. The declarations are not found convincing to overcome the rejection. The first declaration by Stephen Dunn states that it is highly improbable that the extrusion in Bisson is into an atmospheric pressure region with subsequent passage through the sub-atmospheric environment. The declaration states that the extrudate is passed directly into the expansion chamber. The declaration does not have any supportive evidence to conclude that the extrudate is passed directly into the expansion chamber. On column 3 lines 20-25, Bisson et al disclose "for puffing, the paste-like material issuing from the nozzle bores is passed into an enclosure where a sub-atmospheric pressure prevails". This disclosure indicates that the extrudate is passed out of the extruder before it enters into the enclosure. The enclosure is not directly connected to the extruder such that one can conclude that the extrudate does not pass out of the extruder. The claims do not have any limitation on the time at which the foodstuff is at the first temperature and first pressure. When the extrudate exist the extruder, it will still have the temperature at the existing nozzle because product does not cool down

Art Unit: 1761

quickly; however, the pressure is at atmospheric pressure because the product is no longer in the extruder. Even if the time frame is on the order of few seconds, the reference still meets the claimed limitation because the claims do not place any limitation on the time at which the foodstuff is at the first temperature and first pressure. The declaration does not have any evidence to show that the extrudate has to pass directly into the enclosure without any intermediate time out of the extruder.

The Hirst declaration makes similar comment as the Dunn declaration which is not found to be convincing for the same reason set forth above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wed-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

May 8, 2007

  
LIEN TRAN  
PRIMARY EXAMINER

*Group 1700*